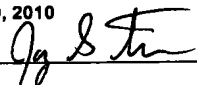



PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) ROCKCO P69AUS	
I hereby certify that this correspondence is being electronically transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] May 19, 2010. on <u>May 19, 2010</u> Signature <u></u> Typed or printed name <u>Jay S. Franklin</u>		Application Number 10/529,573	Filed with an effective filing date of October 17, 2003
		First Named Inventor Robert David BLACK and John Alexander BLACK	
		Art Unit 3633	Examiner Omar F. Hijaz
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). NOTE: No more than five (5) pages may be provided. I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number 54,105 <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ <div style="text-align: right;"><u></u> Signature <u>Jay S. Franklin</u> Typed or printed name <u>603-226-7490</u> Telephone number <u>May 19, 2010</u> Date</div> NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*. <input type="checkbox"/> * Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner of Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Robert David BLACK and John Alexander BLACK
Serial no.	:	10/529,573
Confirmation No.	:	9147
Filed	:	with an effective filing date of October 17, 2003
For	:	CONSTRUCTIONAL UNIT
Group Art Unit	:	3633
Examiner	:	Omar F. Hijaz
Docket	:	ROCKCO P69AUS

The Commissioner for Patents
U.S. Patent & Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE
FOR PANEL OF EXAMINERS TO FORMALLY REVIEW
LEGAL AND FACTUAL BASIS OF REJECTIONS**

Dear Sirs:

The associated Notice of Appeal is being filed concurrently herewith and please consider the following upon conducting the requested Pre-Appeal Brief Conference.

REMARKS

Claims 15-17 and 19-24 are rejected, under 35 U.S.C. § 102, as being anticipated in view of Blier `057 (U.S. Patent No. 4,371,057). Claims 18 and 25 are rejected, under 35 U.S.C. § 103, as being unpatentable over Blier `057 in view of Testu `075 (FR Patent No. 2,663,075). The Applicant respectfully requests withdrawal of the raised anticipatory and obviousness rejections in view of the following remarks.

Blier `057 relates to a telescopic scaffold unit 10 which provides an openwork central section comprising a first U member and a U second member. The Examiner indicates with reference to Fig. 1A of the official action dated February 19, 2010 that the first U member consists of first member arms 21, 23 and a first member base frame 32, 33 and the second U member consists of second member arms 21 and a second base frame 32, 33. The telescoping transverse support members 32, 33 each comprise two elongate bars 32', 32"; 33', 33", which are interconnectable by way of fasteners 34 such that "the length of the support members 32 and 33 may be varied whereby to space the support legs 12' closer or farther apart from one another" (col. 3, lns. 32-35).

With regard to the claims of the application, the base members 15 and 18 of the first and the second members are each a unitary element such that the length of the base members 15, 18 (the width between side arms) is fixed and can not be adjusted. The claims of the application are distinct from the teachings of Blier '057 as the reference fails to teach that "each of the first and the second members comprises a base frame of *fixed* length".

Next, each of the upper and lower support members (base frame) 32, 33 of the first U member of the scaffold unit 10 as taught by Blier '057 comprise two bars 32', 32"; 33', 33" which are described as being "right angle flat bars" (col. 3, Ins. 56,57). The bars 32', 32" and 33', 33" can be connected to each other at one end while the opposite end of the bars 32', 32" and 33', 33" can be connected to a sleeve 14 such that the length of the bars and the distance between the sleeves 14 are adjustable. The bars 32', 32" and 33', 33" each have a vertical wall portion and a horizontal top portion which constitutes "a flat support surface 29 for supporting boards 40 positioned thereon to constitute a support platform" (col. 3, Ins. 60-62). As shown in Fig. 4, the scaffold can be used on a staircase 42 with the legs 12', 12" being received within the sleeves 14. The sleeves 14' are connected at the top of one set of legs 12' while the sleeves 14 can be connected at the bottom of the other set of legs 12". The lower ends of the legs 12 may be provided with flat shoes 43 to provide better support of the scaffold when used on flat surfaces and to prevent damage to the support surface, such as a stair tread. It is clear that the scaffold as taught by Blier '057 is to include all four legs 12 when assembled.

In rejecting the claims the Examiner suggests that the base frame members of the reference are made of two back to back angle members whose flange portion is capable of overlaying a stair. Although the support members 32, 33 may arguably have a flange, the Applicant contends that there is absolutely no teaching in the reference that the flange is for overlaying a support surface to facilitate retaining the base at a first location as currently claimed. Due to the construction of the scaffold, in order to utilize the scaffold in a stairwell, the support legs 12 communicate with the top of a step. For the scaffold 10 to function as designed, the distance between the legs 12" must be shorter than the width of the stair. The Applicant asserts that the support members 32, 33 can in no way overly a support surface so as to retain the base frame. The side view of the scaffold according to the reference shows no flange that extends beyond the sleeve 14. As such, because the width of the scaffold is more narrow than

the stairs, the stair treads can not be accommodated between the sleeves 14 and therefore the flanges of the support members can not engage a stair tread, an upper floor or any other support surface for that matter to facilitate retaining the base frame. To sum, the reference of Blier `057 fails to teach the claim limitations of "a flange for engaging the upper floor . . . to facilitate retaining the base frame and the side arms of the first member within the opening in the upper floor".

As briefly discussed above Blier `057 teaches that the lengths of the support members 32, 33 may be varied to space the legs 12 closer to or further from one another and at a desired angle. The support members 32, 33 are pivotably secured to the sleeve 14 for this purpose. The arms (support members) 21 are secured to the sleeves 14 and a steel rod brace member 26 is used to solidify the connection between the arms 21 and the sleeves 14 (col. 2, Ins, 63-68). The connection between the arms 21 and the sleeves 14 is solid, meaning the arms 21 and the sleeves 14 do not pivot with respect to each other. Even if the arms 21 were pivotably attached to the sleeves 14, which they are not, the Figs. of the reference teach that the point of attachment would be at the very end of the arms 21.

The claims of the application are distinct from the teachings of Blier `057 in that the reference fails in any manner to teach the claim limitations of "a pair of spaced apart adjustable props which are pivotably attached to *the side arms* of the second member at a location *along the side arms that is spaced from the base frame* of the second member".

Blier `057 teaches a steel rod brace member 26 that is used to solidify the connection between the arms 21 and the sleeves 14. Although the brace member 26 may connect the arms 21 with to the sleeves 14, the Applicant adamantly asserts that the claims of the application are distinct from the teachings of Blier `057 in that the reference fails in any manner to teach the claim limitations of "a brace is pivotably fixed to a respective one of the side arms of the second member and releasably securable to a respective one of the adjustable props".

The Applicant acknowledges that the additional reference of Testu `075 may arguably relate to the feature indicated by the Examiner in the official action. Nevertheless, the Applicant respectfully submits that the combination of the base reference of Blier `057 with this additional art of still fails to in any way teach, suggest, disclose or remotely hint at the above distinguishing features of the presently claimed invention.

The Applicant notes further differences and advantages of the claimed constructional unit when compared with the telescopic scaffold as taught by Blier '057. The telescopic scaffold can be used in a wide range of applications and requires time consuming assembly for each application which involves the selection and adjustment of a relatively large number of components. The top section of the telescopic scaffold is variable in length and in width and has to provide telescopic means for adjustment in these two rectilinear motions. In addition, the telescopic scaffold has a pair of adjustable bracing end support members 32 and 33 (see Figures 2 and 3) which are sub-assemblies that incorporate the sleeves 14 in which the legs 12', 12' are slidably adjusted. These end support sub-assemblies 32, 33 enable the legs 12', 12' to be angled inwardly or outwardly or held parallel with respect to each other. It is apparent that the construction of the end support sub-assemblies may provide versatility, however they are complex and complicate the construction and use of the telescopic scaffold. In particular, unlike the claimed constructional unit, the telescopic scaffold of Blier '057 cannot be folded up to enable the legs to lie adjacent the side supports 24 to facilitate movement. This is a feature of the claimed constructional unit which results in a relatively compact unit that can readily be transported between work sites and different locations within a work site and easily assembled to perform its relatively specialized function. The claimed constructional unit does not require two pairs of legs, like the cited reference, but only one pair at one end of the constructional unit with the other end provided with a flange which is positioned on an edge of a floor opening. The telescopic scaffold of Blier '057 is more of a constructional kit that may be capable of a range of uses, but is much more complex and difficult to assemble when compared to the claimed constructional unit.

In view of the foregoing, it is respectfully submitted that the raised rejections should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objections or requirements, as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

10/529,573

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Jay S. Franklin, Reg. No. 54,105

Customer No. 020210

Davis & Bujold, P.L.L.C.

112 Pleasant Street

Concord, NH 03301-2931

Telephone 603-226-7490

Facsimile 603-226-7499

E-mail: patent@davisandbujold.com